IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

RCRev..No. 126 of 2004()

RCA.12/2003 of DISTRICT COURT, KASARAGOD
RCP.6/2001 of MUNSIFF COURT, HOSDRUG
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REVISION PETITIONER/1ST RESPONDENT IN RCA 12/2003:

SUDHAKAR SHENOY, AGED 56 YEARS,
S/O. K.NARAYANA SHENOY, RESIDING AT KUSHAL NAGAR,
HOSDURG VILLAGE, HOSDURG TALUK, KANHANGAD P.O.,
KASARGOD DIST.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS/APPELLANT IN RCA 12/2003 AND 2ND

RESPONDENT/RSPDT.IN RCP 6/2001:
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1. K.P.MUHAMMED, AGED 61 YEARS,
S/O. ABDUL KHADER, BUSINESSMAN,
RESIDING NEAR PAYYANNUR BUS STAND, PAYYANNUR P.O.,
TALIPARAMBA TALUK, KANNUR DIST.

2. P.V.ABDUL KHADER, AGED 57 YEARS,
S/O. ABOOBACKER P., RESIDING AT CORIMUKKU,
SHARDI MANZIL, RAITHAKKAD, PADANNA,
CHERUVATHUR P.O., KASARGOD DIST.

BY ADV. SRI.T.K.VIPINDAS (FOR R1)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO. 126 OF 2004-F

Dated 10th September, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the landlord. The 1st respondent is the tenant and the 2nd respondent is the sub-tenant. The landlord filed the R.C.P under Sections 11(2)(b), 11(3), 11(4)(i) and 11(4)(ii) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller allowed the application under Sections 11(2)(b) and 11(3) of the Act. The appellate authority reversed the finding under Section 11(3). Hence this revision.

2. The brief facts of the case are the following: The landlord leased out the tenanted premises on a monthly rent of Rs.3000/-. Later, it was revised to Rs.3500/-. From September, 1999 onwards the rent was kept in arrears. Further, the tenant sub-let the premises to the 2nd respondent, in violation of the terms of the lease agreement. The landlord was running an Ice-cream and Cool Drink shop in the petition schedule room. Since he was

not keeping good health, he stopped the business and rented out the premises to the 1st respondent. Now, he has recovered from the illness. He has got a large family to look after. He is staying in a rented house. So, he wants to start the very same business he was running there. The petition schedule building was being used in a manner, reducing its value and utility materially and permanently. So, a lawyer notice was caused to be issued, claiming vacant possession of the building. The tenant replied, denying the claim of the landlord. So, the R.C.P was filed. The tenant seriously contested the claim regarding arrears of rent as well as the bona fide requirement urged by the landlord. From the side of the landlord, Exts.A1 to A14(a) were marked and he got himself examined as PW1. From the side of the tenant, he got himself examined as RW1. As court exhibit, Ext.C1 Commissioner's report was also marked. The Rent Controller after noticing the evidence on record, found that the requirement urged under Section 11(3) is bona fide. The landlord has a large family to maintain. He has got two school going children. He is residing in a rented house. The equipments that were used for running the ice-cream business are already with him. With an investment of Rs.5000/- he can re-start the said business. He is having the required amount. The tenant pointed out that the landlord is having another room in the locality, in which he is

running a motor repairing work-shop. In the evidence before the court, the landlord submitted that it was a tenanted room and he vacated it pursuant to the order of this Court in C.R.P. No.884/2002. After noticing the above facts, as stated earlier, the Rent Controller allowed the petitioner under Section 11(3).

3. The tenant appealed. The appellate authority reversed the finding of the Rent Controller regarding bona fide need. The appellate authority noticed that the landlord had earlier stopped the business, owing to illness. To show that he has recovered from the illness, the landlord produced Ext.A5 medical certificate issued by the doctor treating him. The appellate authority found that there was nothing in Ext.A5 to show that the landlord has recovered from his illness. The appellate authority noticed certain defects in Ext.A5 certificate. It also found fault with in not examining the doctor who issued Ext.A5. Therefore, the appellate authority refused to act on Ext.A5 and disbelieved the evidence of PW1 that he has recovered from his illness and therefore, he can start the business. The appellate authority also noticed that the landlord was occupying another building as a tenant and was doing tyre retreading business. But, in the R.C.P he has not mentioned anything about the threat of eviction from that premises. So, the same was also found as a ground against the landlord. The appellate

authority felt that the suppression of the fact regarding occupation of the other building is a material fact casting doubts on the bona fide need urged for the surrender of the petition schedule building. On the above grounds the appellate authority reversed the finding of the Rent Controller.

4. We feel that the genuineness of Ext.A5 or the recovery of the landlord from the illness are not material facts. The landlord incidentally pleaded about them. Even if the landlord is not keeping good health, he can decide to start the business which he was doing earlier. Then the same will definitely constitute a bona fide need. Further the occupation of another rented building and doing business there is also not a ground which can be pressed into service to deny eviction under Section 11(3) of the Act. A person doing motor repairing business or tyre retreading business, as the case may be, in a rented premises can definitely require another room owned by him, for doing some business there. Therefore, the non-mentioning of the above facts were of no consequence, as far as the claim of the landlord is concerned. We feel that the learned appellate authority went at a tangent and rested its decision on irrelevant facts. Consequently, the decision arrived at by the appellate authority under Section 11(3) is illegal, improper and irregular. Accordingly, the Rent Control Revision is allowed. The order of the appellate authority is set aside and the order of the Rent

Controller is restored. No costs.

5. The learned counsel for the respondents prayed for some time to vacate the premises. We heard the learned counsel for the revision petitioner on this point. Having regard to the facts of the case, three months' time is granted, provided the 1st respondent files an affidavit before the executing court, undertaking to vacate the premises within three months from today. He shall pay the arrears of rent, if any, within one month and continue to pay the rent till the premises are vacated. The affidavit in this regard shall be filed within three weeks from today.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/